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REFER TO FILE NO.

1620-3-1

December 22, 2000

**Via Hand-Delivery**

Mr. Mark A. DiNunzio  
Executive Consultant  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Re: **Diversified Water Utilities, Inc.'s Position Relating to Expansion  
of Certificates of Convenience and Necessity for Water and Sewer  
in Pinal County (Docket Nos. W-02234A-00-0371; WS-02987A-99-0583;  
WS-02987A-00-0618; W-02859A-00-0774 and W-01395A-00-0784**

Dear Mr. DiNunzio:

Our office represents Diversified Water Utilities, Inc. ("Diversified") in the various related dockets associated with the expansion of water and sewer certificated areas in Pinal County (involving Johnson Utilities, L.L.C., dba Johnson Utilities Company ("Johnson Utilities"), H2O, Inc. ("H2O"), Queen Creek Water Company ("Queen Creek"), Diversified Water Utilities, Inc. and a recent intervener, Sweet Water Creek Utilities, Inc. ("Sweet Water"). We recently learned Commission Staff was informed of a proposal jointly supported by Johnson Utilities, H2O and Queen Creek (the "Proposing Utilities"). The proposal was developed without consultation or involvement of Diversified.

It is our understanding that the proposal includes:

1. Johnson Utilities and Queen Creek dropping their request to serve water within all of the areas sought by H2O and previously disputed by these parties, and supporting H2O's certification of all that area, being Sections 28, 29, 32, 33 and the portions of Section 31, northeast of the railroad tracks, in Township 2 South, Range 8 East, as well as in the northeast quarter of Section 6, Township 3 South, Range 8 East, thereby resulting in the Proposing Utilities mobilizing against Diversified;

2. Formation of a county domestic water improvement district ("District") by certain landowners in or adjacent to Diversified with the intent to acquire all or a portion of Diversified through either negotiation or condemnation; and

3. Johnson Utilities would be certificated to serve everything else.

Importantly, the District does not exist. The formation of the District will be difficult and subject to numerous legal requirements and standards. For example, before a District may be formed, a petition and hearing process be followed, and the Board of Supervisors must determine, among other things, that the "public convenience, necessity or welfare will be promoted by the establishment of the district." Where the formation of the District will harm an existing certificated entity, any such finding by the Board can be challenged and overturned in a court of law. Further, and significantly a newly formed District will have little ability to raise the finances necessary to acquire Diversified. It is the District, not the County, that must fund the acquisition or condemnation of Diversified. Finally, a District can be cancelled and abandoned once formed. Therefore, formation of the District and the District's willingness and ability to acquire Diversified is, at best, totally speculative.

In reality, the Proposing Utilities seek to benefit themselves at the expense of Diversified. Under the proposal, both H2O and Johnson Utilities would grow substantially, while Diversified and its customers are deprived any growth. In return, Diversified is handed a hollow promise that it will be acquired at an unknown price in the future by an entity that does not exist and cannot demonstrate any ability to raise the capital to purchase Diversified.

Diversified respectfully requests the Commission ignore the proposal and weigh the competing applications based upon known facts, not speculation. It is the public's interest that must guide the Commission's decision. The public interest mandates Diversified's certificated area be expanded. Diversified's certificated area (30% of which is State land) is smaller than any of the Proposed Utilities and most in need of an expanded customer base. Diversified's existing facilities are closest to both the Home Place (Section 28) and Ware Farms (Section 33) in Township 2 North, Range 3 South. Approximately one-third of Bella Vista Farms (Sections 9 and 10, Township 3 South, Range 8 East) is already within Diversified's certificated area. Further, Diversified has facilities on the northern boundary of Bella Vista Farms. The public interest will be served by expanding Diversified's certificate to encompass the remaining portions of the Bella Vista Farms (located in Sections 16, 17, 18, 19 and 23, Township 3 South, Range 8 East), the Home Place and Ware Farms.

Any contention that this speculative proposal is in the public interest is contradicted by Johnson Utilities' attempt to decertify Section 32, Township 2 South, Range 8 East from H2O's certificated area, and both Johnson Utilities and Queen Creek's assertions in pre-filed testimony that H2O is unfit to serve the contested area.

Further, this speculative proposal is yet another attempt to harm Diversified and hinder its ability to serve not only the contested areas, but Diversified's existing customers and certificated area. Johnson Utilities' prior, improper and illegal actions against Diversified have included:

1. Johnson Utilities' disruption of Diversified's WIFA Application;

2. Johnson Utilities' attempt to acquire a well located within Diversified's certificated area, previously committed to Diversified, and at least four miles from Johnson Utilities certificated area and thereby successfully depriving Diversified and its existing customers of a second well;

3. Johnson Utilities' attempt to offer to provide wholesale water service from the foregoing well to property owners within Diversified's certificated area; and

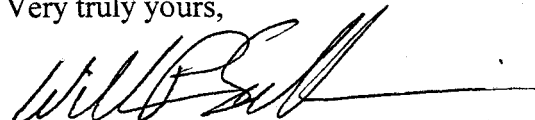
4. Johnson Utilities' disruption of Diversified's relations with its existing and potential customers within Diversified's certificated area.

See, Diversified's Application for Order to Preserve the Status Quo filed December 1, 2000 and the enclosed Temporary Order issued in response thereto.

The proposal being suggested by Johnson Utilities, H2O and Queen Creek not only is detrimental to Diversified and its customers, there is no evidence the District will ever exist or acquire Diversified. The speculative proposal involving the District is not in the public interest and must be summarily disregarded.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



William P. Sullivan  
For the Firm

WPS/tsg

Enclosure: Temporary Order  
cc (w/enc): Carl Kunasek, Chairman  
Jim Irvin, Commissioner  
William Mundell, Commissioner  
Charles A. Bischoff, Esq.  
Joshua J. Meyer, Esq.  
Richard N. Morris  
Petra Schadeberg

cc (w/o enc): Karen E. Nally, Assistant Chief Administrative Law Judge  
Lyn Farmer, Chief Counsel  
Teena Wolfe, Commission Staff Counsel  
Deborah R. Scott, Director  
Marc Stern, Administrative Law Judge  
Richard L. Sallquist, Esq.  
Jay Shapiro, Esq.  
Thomas H. Campbell, Esq.  
Diversified Water Utilities, Inc.

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BEFORE THE ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

IN THE MATTER OF THE COMPLIANT )  
OF DIVERSIFIED WATER UTILITIES, )  
INC. AGAINST JOHNSON UTILITIES )  
COMPANY AND H2O, INC. FOR )  
POTENTIAL INTERFERENCE WITH THE )  
OPERATIONS OF AN EXISTING LINE, )  
PLANT OR SYSTEM. )

DOCKET NOS. W-02234-A-00-0775  
WS-02987A-00-0775  
W-02859A-00-0775

TEMPORARY  
ORDER

BY THE COMMISSION:

This matter having been presented to the Arizona Corporation Commission on Diversified Water Utilities, Inc.'s Application for an Order Without Notice To Preserve Status Quo, and the Arizona Corporation Commission having considered the allegations of the Application and the First Amended Complaint and Diversified Water Utilities, Inc.'s attorney having certified the efforts which have been made to give notice and the reasons supporting Diversified Water Utilities, Inc.'s claim that notice should not be required, and it appearing that immediate and irreparable injury, loss, and damage will result to Diversified Water Utilities, Inc., to wit the alienation of property owners within Diversified Water Utilities, Inc.'s certificated area, the loss of a well and wellsite, infringement upon Diversified Water Utilities, Inc.'s certificated area by another public service corporation and the risk of financing that is critical to Diversified Water Utilities, Inc. all of which are uncompensable after the fact, before notice is given to Johnson Utilities L.L.C. dba Johnson Utilities Company or Johnson Utilities L.L.C. dba Johnson Utilities Company's attorney and a hearing can be held on Diversified Water Utilities, Inc.'s Motion for Temporary Restraining Order and before Johnson Utilities L.L.C. dba Johnson

1 Utilities Company or Johnson Utilities L.L.C. dba Johnson Utilities Company's attorney can be  
2 heard in opposition, and good cause appearing therefore;

3 IT IS THEREFORE ORDERED that Johnson Utilities L.L.C. dba Johnson  
4 Utilities Company, its officers, directors, employees, agents, servants and any and all other  
5 persons in active concert or participation with them be and hereby are immediately restrained,  
6 from:

7 1. Interfering with Diversified Water Utilities, Inc.'s application for  
8 financing with the Water Infrastructure Financing Authority ("WIFA");

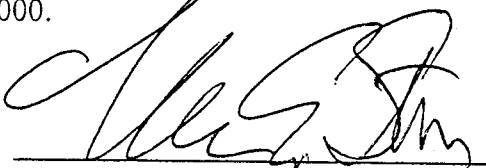
9 2. Extending its facilities or service into the area encompassed by  
10 Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity including, without  
11 limitation (i) entering into a Well Purchase Agreement relating to a wellsite more fully described  
12 on Exhibit A, attached hereto and (ii) entering into a Service Agreement to provide, or otherwise  
13 providing water from the aforementioned wellsite to provide water service to properties within  
14 Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity;

15 3. Contacting, speaking to, discussing and/or negotiating with  
16 landowners and/or prospective developers within Diversified Water Utilities, Inc.'s certificated  
17 area for the purpose of offering water service and/or encouraging said landowners or prospective  
18 landowners from seeking deletions from Diversified Water Utilities, Inc.'s certificated area, or  
19 otherwise filing complaints regarding Diversified Water Utilities, Inc.'s service.

20 IT IS FURTHER ORDERED that, unless further extended by Order of the  
21 Commission this Order shall remain in force and effect pending a hearing whereby Johnson  
22 Utilities, L.L.C., dba Johnson Utilities Company shall appear and show cause why the Order  
23 Preserving the Status Quo should not remain in effect pending a final determination of  
24 Diversified Water Utilities, Inc.'s First Amended Complaint.  
25  
26

1 IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., dba Johnson Utilities  
2 Company shall appear and show cause why the Order Preserving the Status Quo should not  
3 remain in effect pending a final determination of Diversified Water Utilities, Inc.'s First  
4 Amended Complaint, the <sup>on</sup> 6<sup>th</sup> day of December <sup>at 11:00 a.m.</sup> 2000 at the offices of the  
5 Arizona Corporation Commission at 1200 West Washington, Phoenix, Arizona.

6 Dated this 1<sup>st</sup> day of December, 2000.

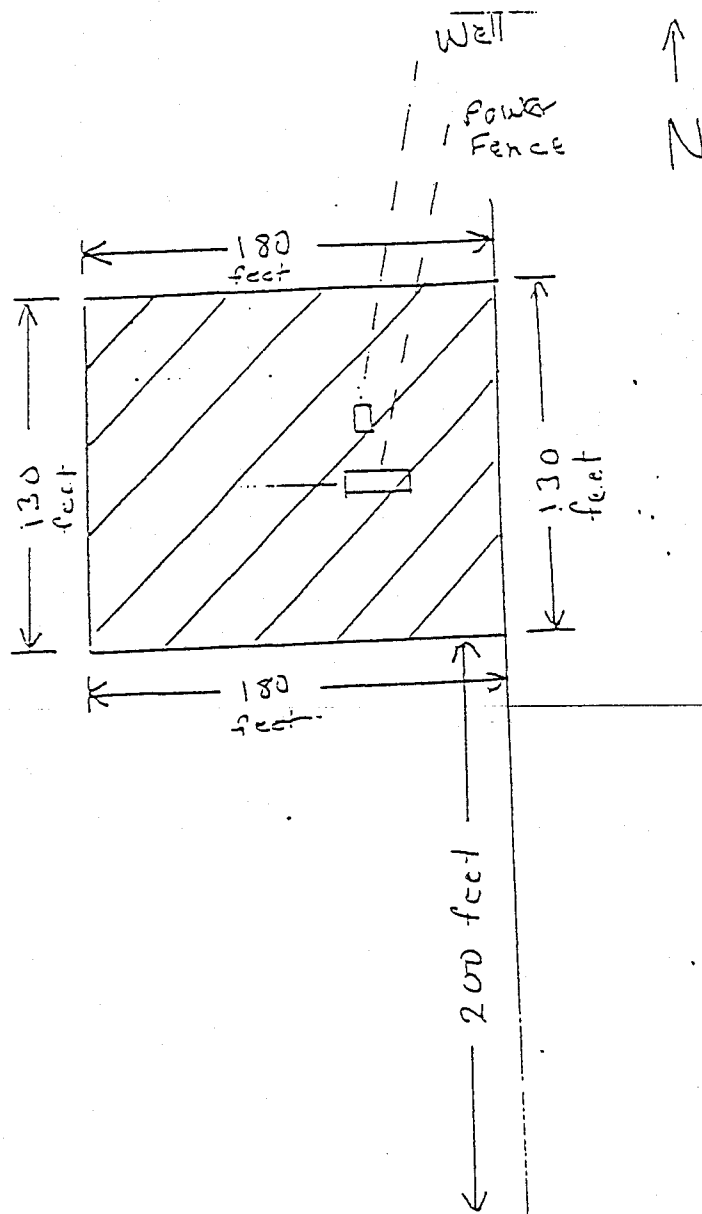
7  
8   
9 ADMINISTRATIVE LAW JUDGE

# EXHIBIT A

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PARCEL A

The cross-hatched portion of the East half of the Northeast quarter of the Northeast quarter of Section 34, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona consisting of approximately .537 acres which includes an existing well, depicted (not to scale) as follows:



Southeast Corner of Section 34, T2S, R8E.